

**MINUTES OF THE
ARIZONA BOARD OF TECHNICAL REGISTRATION**

November 23, 2010

9:30 AM

OPEN SESSION

1. **CALL TO ORDER** – The meeting of the Board of Technical Registration was called to order at 9:30 AM by Chairman Howell “Chip” Shay.
2. **ROLL CALL** – Board Members in Attendance, Harold “Hal” Epperson, Susan Schaefer Kliman, David Komm, Howell “Chip” Shay, Erick Weiland, John Willett, Robert Stanley and LeRoy Brady Board. Absent: Douglas Folk Staff: Ronald Dalrymple, Melissa Cornelius, LaVern Douglas, Kathryn Fuller, Lisa Vardian, Manuel Maltos, Cassie Goodwin, and Patricia Sandino. Assistant Attorney General: Mona Baskin
3. **CALL TO THE PUBLIC**
4. **MINUTES**
 - A. Approve, Modify and /or reject the October 26, 2010 minutes. Mr. Komm moved to adopt the October 26, 2010 minutes. Mr. Weiland seconded, motion carried.
5. **ENFORCEMENT MATTERS**

Review, Consideration and Possible Vote on the following:

 - A. Proposed Dismissals
 1. M10-049, Mark A. Sever, Architect #38383 – Dr. Schaefer Kliman moved for a dismissal of the case, Mr. Willett moved seconded. After discussion, motion carried.
 - B. Proposed Consent Agreement
 1. M09-126, Erik J. Koss, Architect, #40300 – Dr. Schaefer Kliman, moved to dismiss allegation (1): Respondent to prepared plans for the Hunt residence and may have failed to apply the technical knowledge and skill that would be applied by other qualified registrants practicing in the same area and at the same time; in violation of AR.S. §32-128 (C) (4) A.A.C. R4-30-301(6), Mr. Weiland seconded. After discussion, motion carried.

Dr. Schaefer Kliman moved to instruct staff to continue an investigation on allegation (2): Respondent may have submitted plans to his client that were not signed, dated and sealed or marked “Preliminary,” “draft” or “not for construction,” in violation of AR.S. §32-128 (C) (4) A.A.C. R4-30-304(D) (1). Mr. Komm seconded, motion carried.

 2. M10-041, William R. Acorn, P.E. (Mechanical) #10813 – Dr. Schaefer Kliman recused herself, citing a conflict of interest. Mr. Komm moved to find the allegation unsubstantiated and to dismiss the allegation (1): Respondent to design modifications to

solve the HVAC noise issue relating to the location of the HVAC units on the Fairfield Lodge project and may have failed to apply the technical knowledge and skill that would be applied by other qualified registrants practicing in the same area and at the same time, in violation of A.R.S. 32-128(C) (4) and A.A.C. R4-30-301(6). Mr. Stanley seconded. After discussion, motion carried.

Mr. Komm moved to issue Respondent a Letter of Concern on allegation (2) – Respondent submitted engineering design modifications to his client that were not signed, dated and sealed or marked “Preliminary, “draft” or “not for construction,” in violation of AR.S. §32-128 (C) (4) A.A.C. R4-30-304(D) (1). Mr. Stanley seconded, motion was carried.

C. Discussion and Consideration for Non-compliance with Consent Agreement

1. M09-058, GCH Limited # 39258 – Dr. Schaefer Kliman moved not to take further action but to continue monitoring Respondent’s compliance with the current consent agreement. Board also requested staff to monitor payments and provide the Board with an update at the January 2011 Board meeting. Mr. Epperson seconded. After a discussion, motion carried.

6. HOME INSPECTOR ENFORCEMENT MATTERS

Review, Consideration, and Possible Vote on the following:

There were no Home Inspector Enforcement Matters before the Board.

7. DRUG LABORATORY ENFORCEMENT MATTERS

Review, Consideration, and Possible Vote on the following:

There were no Drug Laboratory Enforcement Matters before the Board

8. LICENSING MATTERS

Review, Consideration, and Possible Vote on the following:

1. McClannahan, Brandon, EIT Application, #060028 – Mr. Komm moved to reopen this EIT file, and moved that prior to granting the EIT designation, the file should be reviewed by one of the Board members. Furthermore, Komm moved to give Applicant 90 working days to submit required additional information. Dr. Schaefer Kliman seconded. After discussion, motion carried.

2. Nederbrock, Kurt, Architect Application #101624 – Mr. Nederbrock was present and addressed the Board. Dr. Schaefer Kliman moved to close this application file and recommended that Applicant submit a new professional application to the Board, that the Board merge all updated work experience with records currently on file and because he’s been in the system, that he be exempted from the IDP requirement. Mr. Epperson seconded. After discussion, motion carried. Mr. Weiland – Nay.

3. Learned, Charles, Mechanical Engineering Application, #100999 – Mr. Komm moved to approve Mr. Learned’s application and grant him registration. Mr. Stanley seconded. After discussion, motion carried.

4. Watts, Kenton, EIT Application, #100121 – Mr. Watts was present and addressed the Board. Mr. Willett moved to approve Mr. Watts's EIT application and grant him the designation. Mr. Komm seconded. After discussion, motion carried.

5. Womble, Kevin, Land Surveyor Application, #100800 – Mr. Epperson moved to approve Mr. Womble's request to take the PLS, Arizona Land Surveyor exam and upon successful completion, grant him registration. Dr. Schaefer Kliman seconded. After discussion, motion carried.

6. Gorski, Andrew, Landscape Architect Application #091431 – Mr. Gorski was present and addressed the Board. Mr. Brady moved to approve Mr. Gorski's application and grant him registration. Mr. Epperson seconded. After discussion, motion carried.

9. LICENSING CONSENT AGENDA

A. Review, Consideration, and Action on the Evaluation Committee and Staff Recommendations for the following (Lists of names available at the Board's office for public review):

Mr. Shay suggested that the Board members keep track of all their applications.

Ms. Cornelius addressed the Board and requested two names be removed from the following list.

- 1) Hahn, Su Yung, Application, #101059 – " ARE Exam" list, item 2 on page 5
- 2) Kellogg, Kevin, Architecture Application, #091534 – "Closed List", page 8

1. Hahn, Su Yung, ARE Exam, Application, #101059 – Staff to conduct further to determine whether applicant has already taken the test. Mr. Weiland moved to have Mr. Hahn removed from the ARE listing. Mr. Komm seconded the motion. After discussion, motion was carried.

2. Kellogg, Kevin Architecture, Application, #091534 – Mr. Kellogg responded to the Board's notice informing him that his application file would be closed at the November 2010 Board meeting for failure to complete the requirements for registration. Mr. Kellogg sent in a letter and explained the reason he failed to file on time was because he attended an eighteen month Fellowship program at ASU, and resides only part-time in Phoenix, Arizona and part-time in California. He requested an additional ninety day extension to give NCARB enough time to respond to his certification request and send the Board his required documents. Mr. Weiland moved to leave Mr. Kellogg on the list, Mr. Komm seconded the motion. After discussion, motion was carried.

1. Granting professional registrations, certifications or in-training designations pursuant to A.R.S. §§ 32-122.01, 32-123;
2. Granting approval to applicants to sit for the professional or in-training examinations pursuant to A.R.S. § 32-122;
3. Granting professional registrations to those applicants possessing NCARB Blue Cover or NCEES Model Law Engineer certifications, pursuant to A.R.S. §§ 32-122.01, 32-123;

4. Administratively closing professional or in-training applications pursuant to A.R.S. §§ 32-122, 32-122.01(A); A.A.C. R4-30-204(E);

Mr. Epperson moved that the applicants listed in 9(A)(1) be granted professional registration, certification, or in-training designation; that the applicants listed in 9(A)(2) be approved to sit for the professional or in-training examinations, and be granted registration in the appropriate category upon successful completion of the exams and a staff determination of continued eligibility; that the applicants listed in 9(A)(3) be granted professional registration; and that the application files listed in 9(A)(4) be administratively closed based upon the applicants' failure to meet the Board's licensing requirements. Dr. Schaefer Kliman seconded. After discussion, motion carried.

10. POLICY MATTERS

Mr. Shay moved to elect Dr. Schaefer Kliman as the new Secretary to the Board. Mr. Weiland seconded. After discussion, motion carried.

11. Review, Consideration, and Possible Vote on the following:

- A. Registrations that have been expired for (1) years and recommended to be lapsed: (List of names available at the Board's Office for public review.)

Mr. Komm moved to lapse the registrations listed in 11.A. Mr. Stanley seconded, motion carried.

12. DIRECTOR'S REPORT – Executive Director, Mr. Dalrymple advised:

New Board Members: The governor appointed the following new Board members: Robert Stanley, P.E. (Structural), P.E. (Civil) replaced Claudia Perchinelli, LeRoy Brady, Registered Landscape Architect, replaced Karen Cesare, and Douglas Folk, Public Member, replaced Laurie Woodall.

Rule Changes: Rule making activity is still on hold until June 2012.

The Board requested an exemption to the Rules Moratorium to amend 9 rules. The Governor's office granted the request on November 16, 2010. The Board will work with the Governor's Regulatory Rule Council (GRRC) to have them presented to the council as quickly as possible.

The Board requested that Staff include rules describing the standards for pool and spa inspection since the legislature approved the Home Inspector Bill that added pools and spas to the Home Inspection Program.

Finances: The latest estimates for the State Budget shortfall places it in the \$800 million area for this fiscal year. Legislators advised there will have to be additional cuts made to agency budgets to address the shortfall. Next year's shortfall is estimated at over 1.4 billion dollars.

Dr. Schaefer Kliman questioned whether it was possible that the Board funds be swept again by the Legislation and if so, was there anything the Board can do to prevent it. She added her

concern that it was unfair to put the burden on the registrants and have to deal with the State's inability to get a budget approved. Mr. Dalrymple reported that it was a strong possibility that the Legislature would sweep the Board's fund again. He also added the law suits against the legislature did not prevail, meaning that the legislature can sweep the fund.

Mr. Dalrymple reported that the Board currently has over a million dollars in its fund and hopes to use it to replace the AS400 computer. The Board is the only agency who still functions with the AS400 and pays a minimum of \$72,000.00 a year to maintain the program. The Arizona Department of Administration (ADOA) proposed a cost of \$100,000.00 to pay for a person to shadow the only individual who knows how to program the AS400 and he plans to retire.

13. BOARD CHAIR'S REPORT -- Mr. Shay reported on the following items discussed at the Home Inspector Rules and Standards Committee Meeting:

1. The Committee discussed Home Inspector rules of professional conduct and determined that the practice of allowing home inspectors to offer warranties for their work paid for by home security companies in exchange for referrals for a free security system inspection would be in conflict with A.A.C. R 4-30-301.01.B.1 and will be reviewed until a Substantive Policy Statement can be formulated. Representatives in attendance from Brinks Security and Arizona American Society of Home Inspectors (AZASHI) were so informed and further dissemination of this position will be made.
2. The Committee reviewed Home Inspector rules of professional conduct and determined that if a company was licensed as a home inspection company, a termite inspection company and termite treatment company, it would not be in conflict with ACCR4-30-301. B.1 to contract to treat the structure for termites.
3. The Committee reviewed whether it was a conflict of interest to allow home inspectors to include payment for their service under escrow payment since it might be concluded they would prepare a biased report to facilitate the closing. It was determined that this was not an inherent conflict of interest, although it might not be a good business decision.
4. The Committee discussed whether there was a violation of standards for a home inspector to refer tradesmen to repair defects, even though there were no fees involved. It was determined that this was not a violation, and in some communities, it might be a service to help the homeowner not engage a disreputable tradesman.
5. The Committee reviewed and approved the annual revisions to the Checklist Supplement & Industry Practices (water heater controls, aluminum wiring, polybutylene piping) and instructed staff to post it in November on the BTR web site, in a readily accessible format.
6. The Committee reviewed the status of the ASHI pool & spa standards for Arizona revision and adoption. This is still in progress and will be reviewed in the February meeting.

14. STANDING COMMITTEE REPORT

- A. Legislation and Rules Committee (“L&R”) – Dr. Schaefer Kliman advised there was nothing new to report. The next L&R Committee meeting is scheduled for December 2, 2010, and she will provide a report at the January 25, 2011, meeting.
- B. Budget Committee – Nothing new to report.
- C. Environmental Remediation Rules and Standards Committee (“ERRS”) – Mr. Weiland advised there was nothing new to report.

15. BOARD MEMBER REPORTS ON OUTSIDE ACTIVITIES

- A. National Council of Examiners for Engineering and Surveying (“NCEES”) Nothing new to report.
- B. National Council of Architectural Registration Boards (“NCARB”) Mr. Shay stated he attended the NCARB’s Board Chairs’ and Executive Directors’ Council in New Orleans, Louisiana, on November 3, 2010 and reported the following:
 - 1. Representation: Out of 54 jurisdictions 48 (90%) board chairs and 36 (67%) executives.
 - 2. Value of Architecture and NCARB (similar issues in all technical professions)
 - a. They control registration through National Association of Home Builders (NAAB), Intern Development Program (IDP), and Architect Registration Examination (ARE)
 - b. Less motivation for graduates to become licensed
 - c. 38,000 out of 105,000 Architects (1/3)
 - d. Currently 15, 000 interns. (1/2 of NCARB) (IDP)
 - e. Value is related to reciprocity and recognition (currently American Institute of Architect (AIA) is primary recognition)
 - 3. Threats to reciprocity (this is what NCARB is all about)
 - a. Registration standards are not uniform
 - b. Lack of uniform continuing education standards (Model Law)
 - c. 20 (37%) of Jurisdictions do not require NAAB education. Illinois and Massachusetts will require it in 2011 (33%)
 - d. Many boards do not accept NCARB, Broadly Experienced Architect (BEA), and Broadly Experienced Foreign Architect (BEFA) Certification
 - e. Other impediments: e.g. Business license
 - 4. Funding Model: Cost is born by states and registrants who subsidize interns and examination.
 - 5. Ms. Cornelius met with the Member Board Executives; the national trend is to require Continuing Education. Whether the Board will hear legislation proposed on the issue to require Continuing Education is currently unknown at this time. The AIA might decide to have Continuing Education in Arizona. The argument that NCARB proposed is that we should have Continuing Education to make reciprocity easier for our licensees to obtain. Mr. Dalrymple strongly disagrees with this argument.

The MBE's reported that it is very hard to regulate and audit Continuing Education because of the differing standards for the courses.

6. Dr. Schaefer Kliman reported attending a meeting with NCARB on behalf of Western Conference of Architectural Registration Boards (WCARB). WCARB is very adamant about Continuing Education deployment, but is becoming more and more difficult for the states and their Board Members to travel due to funding. WCARB is looking to promote Continuing Education which people can use for their licenses but can also benefit the Board members as well. WCARB is assembling a program which will be run by Darlene Frost, from Minnesota, the program is called "How to be a better Board Member of the Regulatory Board."

The other two items that were discussed at the Regional: Region Six, is a very large region, but some of the smaller regions are having a difficult time getting individuals to volunteer for our National Board. There has been some discussion of not having a region based election but allowing any candidate to run and be on a National Board. Region Six felt very strongly about this and sent a letter to the National Board letting them know these discussions are going on and that it is important that the National Board have some regional presentation.

The other issue discussed was how the board officers are being elected and about a lot of campaigning that occurs at these regional meetings. The region felt this was an inappropriate use of NCARB funds. If those delegates wanted to campaign and attend these meetings, they should fund their own way or have their region pay for them. So a letter was sent to the National Board, reviewed, acknowledged and will be discussed on the next WCARB Board meeting.

Region Six will be hosting the next 2012 Regional Meeting held in Seattle, Washington, in early March.

- C. Council of Landscape Architectural Registration Boards ("CLARB")
Nothing new to report.
- D. National Association of State Boards of Geology ("ASBOG") – Mr. Weiland reported for ASBOG, Annual Meeting in St. Louis, Missouri.

The Council of Experts reviewed the October 2009 test on Thursday and the May test on Friday. The October 2009 test retained the 2005 task analysis allocations, while the May 2010 test will be given under the new 2010 task analysis allocations. During the COE period several of us reviewed questions from the data bank that were classified with tasks that no longer apply with the new 2010 task template to see if they fit into one of the new categories.

ASBOG held its annual meeting of Board Members. Several states have gone to multi-year renewals from yearly. Several states attempted to have Continuing Education added to registration requirements, but failed in their attempt. The Budget appears to be the most controversial item, as it remains in the red for this year. The proposed budget for 2011 and 2012 were presented with negative balances, which led to a significant debate.

Mr. Weiland pointed out a "savings" of over \$70K could easily be obtained based on an increase of the 2009 actuals that were provided, rather than continually budgeting based on the prior budgets. Mr. Weiland made a motion that the 2011 budget be approved, but that the 2012 budget be re-evaluated based on 2009- 2010 actuals prior to the 2011 Annual General meeting for adoption prior to 2012. The motion was passed.

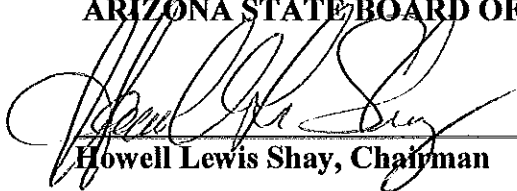
The other item that arose during discussion with ASBOG is comity with Canada; several states now have agreements with the Canadian agencies. Mr. Weiland has been assigned to work with the Canadian agencies to develop a questionnaire that would be distributed to the States and Provinces in order to determine what is currently on the books to allow for this, and what obstacles might exist within the legislation and rules. Mr. Weiland will provide progress reports to the Board meeting.

16. FUTURE BOARD MEETINGS –Tuesday, December 21, 2010 at 9:30 AM.

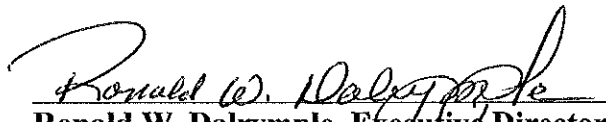
17. FUTURE AGENDA ITEMS –None at this time.

18. ADJOURNMENT–Meeting adjourned at 11:37 AM.

ARIZONA STATE BOARD OF TECHNICAL REGISTRATION



Howell Lewis Shay, Chairman



Ronald W. Dalrymple, Executive Director